

OLL85-3713/1  
2 December 1985

MEMORANDUM FOR: Comptroller  
Office of Security, [redacted]  
Special Assistant, DDA, [redacted]  
DC/ALD/OGC, [redacted]  
DD/Office of Personnel, [redacted]

FROM: [redacted]  
Chief, Legislation Division/OLL

SUBJECT: Redraft of State Department's Diplomatic  
Security Act

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1. Attached for your review and comment is State's redraft of their Diplomatic Security Act. This redraft was prepared in response to an OMB request, and is not meant to preclude further amendments or State's consideration of our own redraft which was provided to them last Friday.

2. After you have had a chance to review the attached bill, I think our best course of action is to schedule another meeting with State to discuss this redrafted bill. In this regard, I will be in touch with you regarding this proposed meeting as soon as we can confirm a time with State Department.

STAT

Attachment  
as stated

Distribution:  
Original - Addressee(s)  
1 - D/OLL  
1 - DD/OLL  
1 - OLL Chrono  
1 - OLL/LEG/Subject: Diplomatic Security  
1 - [redacted] Signer  
OLL/LEG: [redacted] (3 Dec 85)

STAT  
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Action  
C 85-3713

**Office of Legislative Liaison**  
Routing Slip

TO:	ACTION	INFO
1. D/OLL		X
2. DD/OLL		X
3. Admin Officer		
4. Liaison		
5. Legislation	X	
6. Brody		X
7.		
8.		
9.		
10.		

SUSPENSE 4 Dec 85  
Date

Action Officer:

Remarks: *to State*  
*Action comp. per TELECON & OMB-17 Dec '85*

2 Dec 85  
Name/Date

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

December 2, 1985

**SPECIAL**

LEGISLATIVE LIAISON

85-3713

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer-

Department of Labor	National Security Council
Department of Justice	Office of Personnel Mgmt.
Department of the Treasury	General Services Admin.
Department of Agriculture	Central Intelligence Agency
Department of Commerce	
Department of Defense	
United States Trade Representative	
United States Information Agency	
Agency for International Development	

SUBJECT: (1) State's reaction to OPM, GSA, Justice, CIA, and Defense views on the original State proposal entitled the "Diplomatic Security Act" as circulated by OMB for interagency review on October 28, 1985.

(2) State's revised draft bill entitled the "Diplomatic Security Act."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than COB, WEDNESDAY, DECEMBER 4, 1985.

Questions should be referred to **SUE THAU** (395-7300), the legislative analyst in this office or to **DAVE SPEVACEK** (395-4580).

*Ronald K. Peterson*  
RONALD K. PETERSON FOR  
Assistant Director for  
Legislative Reference

Enclosures

cc: H. Schreiber P. Hanna  
R. Greene J. Barie  
B. Blum B. Tuttle (Rm. 153)  
R. Rettman (please coordinate within GC)

**SPECIAL**

K1-4/853



United States Department of State

Washington, D.C. 20520

*Shaw*

NOV 25 1985

Dear Mr. Miller:

The Department of State has reviewed the comments of the General Services Administration, the Department of Justice, the Central Intelligence Agency, and the Defense Department on our draft bill "To provide for the security of U.S. diplomatic personnel, facilities and operations..." and has the following responses.

GSA

The Department confirms the understandings reached in telephone discussions with GSA and agrees to the changes in the bill and analysis set forth in GSA's memorandum of November 8.

JUSTICE

With respect to the comments of the Justice Department, first, section 101 of the draft bill contains no new authority. For domestic protection it reflects in the phrase "as authorized by law", as well as in section 101(d), the present division of responsibility among agencies. Sections 125 and 126 of P.L. 99-93 contain the current authority of law referred to by this language. Section 101(b), on assistance by other agencies, does not override existing law, but, to the extent agencies may need explicit authority to provide assistance on a non-reimbursable basis, this bill provides that authority. We plan to modify section 101(b), however, to make clear that assistance is to be provided through inter-agency agreements.

As to Title II, the Inman Panel clearly did not believe that existing law and regulation are adequate to deal with accountability for overseas terrorist incidents. The

The Honorable

James C. Miller, III, Director,  
Office of Management and Budget.

Attention: Ms. Sue Thau,  
Legislative Reference Service Department.

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agrees with the Panel. Our bill, however, does leave disciplinary action to the employing agency. Since the proceeding record under this bill is the record for the disciplinary proceeding of the employing agency, we believe it is fair for that agency to bear the hearing costs.

The members of a particular Board might, or might not, be currently serving employees. To the extent that they are not, we agree with the Department of Justice that they should be treated as Special Government employees for conflict of interest purposes.

We do not wish to expand the jurisdiction of the Board to hostage-taking incidents which do not involve serious injury, loss of life or property damage. Such an inquiry during an ongoing hostage incident could prejudice sensitive efforts to resolve the incident, and an inquiry after resolution of an incident without death, injury or property damage seems to be more than is necessary.

Since we do not know how often, if ever, a Board may be convened, or how parallel incidents might be, we prefer to rely on permanent agency staff for continuity and procedural regularity. As to protection of national security information, section 203(b) of the bill provides statutory confidentiality during Board proceedings. Once a Board finishes its work, custody of its records reverts to the State Department which will safeguard them.

The Justice Department's suggested rewording of section 203(a) on subpoenas is acceptable to us.

The Board seems to us to perform an adjudicative and operational function and therefore is not an advisory committee. However, if the Justice Department has doubts, we agree that the bill should explicitly exempt the Board from the Federal Advisory Committee Act. Should it also be exempted from the Government in the Sunshine Act?

We accept the Justice Department's suggestion of new language for section 203(a) to avoid prejudice to pending criminal investigations or prosecutions.

With respect to the exemption from the Freedom of Information Act, we believe--as did the Inman Panel--that a broad exemption is essential in order to let Boards complete their urgent work, rather than spend a lot of time and staff resources processing FOIA requests from the media, families of victims, suppliers of security equipment, and the like. Once the Board finishes its work, however, the records could revert to the Department and FOIA requests would be handled as for

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other Department records. We will clarify this point in the bill. We note that there is no exemption from the Privacy Act.

Finally, as to the Justice Department's procedural concerns, as we have previously made clear, once the Board makes its recommendation to the head of employing agency, existing disciplinary laws and regulations apply. If the employee has not requested a hearing, there will be a barren record upon which to base disciplinary action. We do not think the law has to specify the details of what the notification should contain; prudent administration will dictate whatever due process requires, both at that stage and after it reaches the agency. We believe that "probable cause" is sufficiently a term of art that the Board will have adequate procedural guidance from agency or its own counsel. Since the hearing is an APA hearing, the presiding official will be an Administrative Law Judge.

#### CIA

The principal concern of the CIA seems to be with possible infringement on CIA's security responsibilities for its own personnel, information or activities. It is clearly the intent of the Inman Panel, with which we agree, that primacy in this area overall should be vested in the Secretary of State. We also recognize CIA's concerns for interference in its intelligence operations overseas. Section 101(a) of our bill attempts to address this kind of concern by requiring the Secretary to develop policies and programs "in consultation with other agencies having personnel or missions abroad". If this is not adequate, we could perhaps insert "foreign intelligence" in section 101(d) along with law enforcement and domestic security.

With respect to the Accountability Review Boards, we are convinced that some such provision will be attached by the Congress to any bill we send up without it, and we believe that our draft (with the revisions discussed in other parts of this letter) is more effective and provides better protection than what Congress is likely to give us if we are silent. As to CIA's specific comments, our responses follow. We think that it goes without saying in legislation that classified information would be furnished only to persons authorized to have access to it--with necessary security and other clearances. Similarly, we do not think that an ARB has to be told by law to protect national security information in its reports to Congress. Sections 203(b) and (c) illustrate our concern for confidentiality. The non-reimbursable assistance issue is taken care of by revisions mentioned in the part of this letter addressed to GSA.

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We would oppose CIA's proposed section 211. We believe that there can only be one accountability review process for overseas incidents, which are almost inevitably going to effect more than one agency's operations. Since the disciplinary process would be turned over to CIA if one of its employees were found accountable, we believe that this is sufficient protection for CIA's interests. We note that section 202(a) of our bill provides for the ARB to include a member designated by the agency employing an employee who is subject to a proceeding.

Finally, the appropriation request will have to be justified in detail both to OMB and the Congress. If CIA has resource requirements in addition to amounts requested to be authorized, we would have no objection to an increase which can be justified.

### Defense

While terms such as "counterterrorism" used in a statute have the meaning given to them by the legislative history, rather than the dictionary, we would object to substituting "antiterrorism" not only on that ground, but because we do anticipate some offensive measures to counter terrorism, such as diplomatic initiatives.

With respect to the classified comment about section 101(a)(4), our intent was to refer to overseas incidents, and adding the word "abroad" should resolve any problem.

With respect to the classified comment on section 103, we believe that section 102(d) with the revision suggested above under CIA takes care of the problem.

While we accept that security responsibilities must be assigned to an employee before the employee can be held accountable for such responsibilities, we do not want to tie ourselves in the bill to any particular method for doing this. We would oppose the change in section 204.

As we understand the purpose of Defense's revision of section 205(a), it is to provide that investigation of accountability of members of the Armed Forces is to be done by the military service or the Defense Intelligence Agency if the member is under command of an area military commander (our proposal) or assigned to a Defense Attache or Defense Intelligence Agency Liaison Detachment. While this would shift investigation of some members of the country team under the Ambassador from the ARB to the military, we are prepared to accept this change. While there is no explanation of the

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purpose of the change, we presume that it is to assure that all members of the Armed Forces have the same procedure under the USMJ and that is how we would justify it to Congress.

With best wishes,

Sincerely,

A handwritten signature in dark ink, appearing to read 'Wm Ball', written in a cursive style.

William L. Ball, III  
Assistant Secretary  
Legislative and Intergovernmental affairs

KF-41



United States Department of State

Washington, D.C. 20520

*Shaw*

NOV 25 1985

Dear Mr. Miller:

The Department of State has reviewed the comments of the Office of Personnel Management on our draft bill "to provide for the security of United States diplomatic personnel, facilities and operations..." and has the following responses:

The first OPM comment is an objection to our imposing a requirement that the Director of the Diplomatic Security Service be drawn from the career SES or SFS. We think that the recommendation of the Inman Panel that this important officer be chosen from the ranks of the SES or SFS was carefully considered and should not be rejected without strong affirmative reasons. We do not believe that limiting the choice to the career SES and SFS will prevent us from obtaining the best person for the job.

The second comment is to add a reference to 5 U.S.C. 3109 in the provision for the accountability review board to hire experts and consultants. This is a useful suggestion, and we will do so.

The third comment has to do with administrative leave. OPM suggests that there may be cases when the head of agency concerned would wish to suspend without pay an employee who is subject to accountability proceedings. Here again this proposal is based upon a recommendation of the Inman Panel, and in our view the possibility of cases where an employee should be suspended without pay is too limited to justify a change.

The next OPM comment has to do with establishing a proceeding under the APA presided over by an administrative law judge (ALJ). OPM believes that this is unnecessary, cumbersome and a bad precedent. The procedure envisaged by the Inman Panel, which we have not followed, contemplated a mixed fact-finding and decisional body with authority over all employees other than members of the Armed Forces. We felt that it would be unnecessarily controversial to take the function of

The Honorable

James C. Miller, III, Director,  
Office of Management and Budget.

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imposing disciplinary measures away from the head of the employing agency. Nevertheless, we felt that the accountability review board should have a greater role than fact-finding, but, recognizing that the members would normally be ad hoc and have other regular duties in or out of government, we intend that the task of presiding over the formal proceeding should be delegated. In order that the board may retain meaningful control over such recommendations as may emerge from a proceeding, we believe that it is necessary to have the expertise of an ALJ to build a proper record, prepare findings of fact, and make recommendations which the board can act upon rationally and expeditiously. Because the focus of the bill is upon overseas incidents, we expect that most cases which come before the board will involve members of the Foreign Service. Since separation for cause cases come before the Foreign Service Grievance Board, which does not have ALJ's or the expertise of ALJ's, we continue to believe that our proposal is the most effective way to fix accountability on the basis of a good record and findings of fact but with appropriate due process protections. In view of the formality of the hearing, we wonder if OPM would prefer that judicial review should be at the court of appeals level, rather than district court.

OPM has some other comments on the disciplinary procedures in the draft bill. It was not our intention to require final action by an agency head under section 207(b); it would be perfectly permissible for the agency head to report that disciplinary action had been initiated in accordance with normal procedures within 30 days from receipt of a recommendation from the board. As further clarification, it was not our intention in any way to create a new disciplinary proceeding; we merely wish to establish that the record prepared for the board by an ALJ shall be used in agency disciplinary proceedings (to avoid duplication).

With best wishes,

Sincerely,



William L. Ball, III  
Assistant Secretary

Legislative and Intergovernmental Affairs

UNDER SECRETARY OF STATE  
FOR MANAGEMENT  
WASHINGTON

November 29, 1985

Dear Mr. Miller,

I am transmitting as an enclosure to this letter a revised bill and analysis to provide for the security of United States diplomatic personnel, facilities and operations, and for other purposes.

The enclosures reflect the changes and clarifications which we undertook in response to comments from OPM, GSA, Justice, Defense, and CIA as contained in Mr. Ball's two letters of November 25, except that:

(1) Our initial proposal to insert the word "abroad" in Section 101(a)(4) was in error. That paragraph does deal with protection of foreign missions and personnel in the United States. The proper response should be that the use of the phrase "as authorized by law" in that paragraph means that we only have the authority in this area provided by other law. We do have domestic protective functions under existing law.

(2) We have expanded the scope of Section 101(d) to better reflect the concerns expressed by CIA; we believe the statutory phrase "security of foreign intelligence operations and assets", taken with the specific language in the analysis, should take care of CIA's concerns.

The revised bill also contains textual changes to reflect understandings reached with USIA and AID on their retained roles and access to resources in overseas security.

In addition, in view of the general, strong opposition to a new disciplinary proceeding under the Administrative Procedure Act, although we continue to believe that the Congress will write something if we do not, this draft omits provision for such a proceeding. Instead the bill provides for the ARB to recommend disciplinary action to the head of employing agency or military service, and that officer takes over from there, but he or she must report action taken to the ARB which reports in turn to the Secretary of State, who reports to Congress. In

The Honorable  
James C. Miller, III,  
Director,  
Office of Management and Budget.

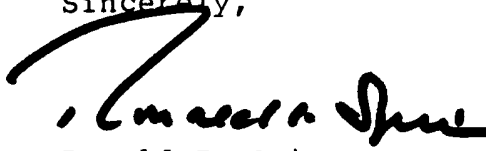
- 2 -

view of our special problems with the Foreign Service grievance process, the bill provides that actions taken as a result of ARB proceedings are not subject to that process. This means that disciplinary action short of separation for cause is within agency control (unless the particular employee has MSPB access), but separation for cause would require a hearing before the Foreign Service Grievance Board under Section 610 of the Foreign Service Act.

We note that our bill departs from the Justice Department proposal on subpoenas. Its draft was limited to subpoenas of employees, which is the case where subpoena is least likely to be necessary, so we have substituted the term "person" or "persons".

Finally, a proposed new authorization for antiterrorism research and development has been added.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald I. Spiers", with a large, sweeping initial "R" that extends upwards and to the left.

Ronald I. Spiers

Enclosures:

As stated.

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Section-by-Section Analysis

AN ACT  
TO PROVIDE FOR THE SECURITY OF  
UNITED STATES DIPLOMATIC PERSONNEL,  
FACILITIES AND OPERATIONS, AND FOR OTHER PURPOSES

Section 1 - Short Title

The Act may be cited as the "Diplomatic Security Act."

Section 2 - Findings and Purpose

The Diplomatic Security Act is a response to the new and profoundly difficult security-related challenges confronting United States Government employees and missions abroad, as well as foreign officials and missions within the United States.

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The Act is based on the recommendations of the Advisory Panel on Overseas Security formed by the Secretary of State in July 1984. The Panel consisted of Admiral Bobby R. Inman (Chairman), Senator Warren B. Rudman, Congressman Daniel A. Mica, Ambassador Lawrence S. Eagleburger, Ambassador Anne L. Armstrong, Lieutenant General D'Wayne Gray and Messrs. Robert J. McGuire and Victor H. Dikeos (Executive Secretary).

The Act creates a comprehensive new framework for the enhanced security of official personnel and facilities. The framework consists of three complementary facets. The Act sets forth the responsibility of the Secretary of State with respect to the security of diplomatic operations at home and abroad, and additionally sets forth certain provisions relating to the Bureau of Diplomatic Security and the Diplomatic Security Service of the Department of State; it provides for the convening of boards of inquiry to examine issues of

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accountability in cases involving terrorist or security-related attacks against United States Government personnel or facilities abroad; and it provides authorization of appropriations necessary for the Department of State to carry out its responsibilities in the area of security and counterterrorism, and in particular to finance the acquisition of new missions overseas as recommended by the Advisory Panel on Overseas Security.

#### TITLE I - DIPLOMATIC SECURITY

##### Section 101 - Responsibility of the Secretary of State

Subsection (a) of section 101 requires the Secretary of State to develop and implement, within the scope of resources made available, policies and programs, including funding levels and standards, to provide for the security of United States Government operations overseas of a diplomatic nature and foreign government operations of a diplomatic nature in the United States. The subsection provides specific content to the formulation "operations of a diplomatic nature" by listing certain overseas and domestic security functions which are

encompassed by the Secretary's responsibility.

With respect to overseas security, under paragraph (1) of this subsection the responsibility of the Secretary of State extends to the protection of all United States Government employees who are overseas on official duty (and their accompanying dependents), other than those under the command of a United States area military commander. The formulation used to describe the persons covered derives generally from section 207 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3927), which specifies the persons who are under the direction and supervision of a United States chief of mission. Similarly, under paragraph (2) the Secretary's responsibility extends to the establishment and operation of security functions at all United States Government missions abroad, other than facilities or installations subject to the control of a United States area military commander.

On the domestic side, under paragraph (3) the responsibility of the Secretary of State embraces the establishment and

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operation of security functions at all Department of State facilities in the United States. It also extends, under paragraph (4), to the protection of foreign missions, international organizations and foreign officials and certain other foreign persons in the United States. As the phrase "as authorized by law" in paragraph (4) makes clear, the precise scope of the latter function is defined by other provisions of law on the subject, in particular section 37 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709), which was recently enacted by section 125 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Public Law 99-93).

Section 101 also contains certain other provisions which are closely related to the matters described in subsection (a). Subsection (b) imposes an obligation on other Federal agencies to cooperate to the maximum extent possible with the Department of State to facilitate fulfillment of its security responsibilities. It also provides that for these purposes such agencies through agreements may render assistance, with or without reimbursement, to the Department of State. It is expressly provided that such agencies may perform security inspections, provide logistic support, and perform other

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overseas security functions as authorized by the Secretary of State. Assistance of this kind would be appropriate in circumstances, for example, involving the facilities of other agencies abroad. Subsection (b) also provides that the Department of State may furnish training assistance and related equipment, upon request and with or without reimbursement to host government personnel assigned to provide security for United States Government employees and missions abroad. Such assistance would be independent of existing programs for antiterrorism assistance under chapter 8 of Part II of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2349aa et seq.).

Subsection (c) makes clear that this Act does not limit the authority or responsibility of a chief of mission as set forth in section 207 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3927). Similarly, subsection (d) makes clear that this Act does not limit the authority or responsibility of any other Federal, State or local agency with respect to law enforcement, domestic security operations, or security of

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foreign intelligence operations and assets. This language protects, for example, CIA's existing security responsibilities for CIA personnel, information and activities, so that it may effectively, carry out its assigned responsibilities and mission.

The specific approval contained in subsection (e) for a lease of up to 250,000 square feet by the Administrator of General Services serves to expedite the process of accommodating the personnel needed by the Department of State to carry out its security-related responsibilities. The Public Buildings Amendments of 1972 require the Administrator to charge commercially comparable rates for space and services.

#### Section 102 - Bureau of Diplomatic Security

Subsection (a) of section 102 provides for the Bureau of Diplomatic Security of the Department of State to be headed by an Assistant Secretary of State. The appointment of the Assistant Secretary for Diplomatic Security would be made by the President with the advice and consent of the Senate, as is the case with the other Assistant Secretaries of State. Subsections (b) and (c) provide for technical conforming

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changes in the law made necessary by the increase in the number of Assistant Secretaries at the Department of State.

Section 103 - Diplomatic Security Service

Under subsection (a) of section 103, the Diplomatic Security Service of the Department of State is to be headed by a Director who shall be chosen by the Secretary of State, who shall come from the ranks of the career Senior Foreign Service or the career Senior Executive Service, who shall have qualifications appropriate for the position and who shall act under the supervision and direction of an Assistant Secretary of State.

Subsection (b) makes clear that the Diplomatic Security Service is to be staffed by drawing upon the existing Foreign Service and Civil Service personnel systems. Qualifications required for assignment or appointment to positions in the Diplomatic Security Service are to be prescribed by the Secretary of State. In the case of "Special Agents," the

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position qualifications may include minimum and maximum entry age limitations (e.g., 21 years minimum and 35 years maximum). Such limitations are commonly found in organizations having security-related responsibilities. In addition, the position qualifications for Special Agents must incorporate the standards required by law in order to carry out security functions and to exercise the law enforcement authorities available to such Special Agents. Section 37 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709) provides for the Secretary to issue regulations governing activities of the Special Agents. In view of the fact that Special Agents perform a unique function -- they are directly involved in protecting lives and carry firearms in certain situations -- subsection (b) authorizes the Secretary to include in such regulations provisions for special disciplinary procedures to apply to Special Agents. Such procedures might, for example, pertain to the use of administrative leave (a common element of practice among organizations having security-related responsibilities).

Subsection (c) provides that the Diplomatic Security Service shall perform such functions as the Secretary of State may assign to it.

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## TITLE II -- PERFORMANCE AND ACCOUNTABILITY

### Section 201 - Accountability Review

Section 201 instructs the Secretary of State to convene a board of inquiry, referred to as an Accountability Review Board (the "Board"), in any case involving serious injury, loss of life or significant destruction of property at or related to a United States Government mission abroad, other than a facility or installation subject to the control of a United States area military commander. The requirement does not, however, pertain to cases clearly involving only natural or other causes not related to security. It also does not pertain to cases in which there was clearly no breach of duty by a United States Government employee that contributed to such injury, loss of life or destruction of property.

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### Section 202 - Accountability Review Board

Under subsection (a) of section 202, a Board shall consist of three to five members designated by the Secretary of state, who also chooses the Chairperson of the Board. In addition, this subsection provides for an expansion of the Board in certain cases in which employees of agencies other than the Department of State are found to have been involved in the incident under review. Board members appointed from outside the Government would be special Government employees for conflict of interest purposes.

Subsection (b) deals with the issue of support services for the Board. The Board is to obtain all necessary facilities, services and supplies through the Department of State. The Board's expenses are also to be paid by the Department. In addition, the Board may retain the services of employees, experts and consultants who shall be responsible to the Board, may request that employees of other agencies be detailed to the Board, and may request assistance from an inspector general of the Department of State.

### Section 203 - Procedures

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Section 203 empowers the Board to make use of certain authorities of a procedural nature. In particular, under subsection (a) of this section, the Board may issue or authorize the issuance of a subpoena to obtain the testimony of witnesses and the production of documentary or other evidence from any person or agency. In the event of refusal to obey such a subpoena, the Board may apply to the Attorney General to request enforcement by an appropriate United States court. The Attorney General may withhold information if disclosure would prejudice a criminal investigation or prosecution.

Under subsection (b), the Board shall adopt for administrative proceedings under this title such procedures with respect to confidentiality as it deems necessary, to ensure in particular the protection of sensitive information relating to national defense, foreign policy or intelligence. Those procedures may pertain to the conduct of closed proceedings, for example, or to the submission and use of evidence in camera.

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Subsection (c) provides that the records relating to administrative proceedings under this title (including any hearing under section 206) must be maintained separately from all other records of the Department of State, that they must be adequately protected and that they shall be exempt from disclosure under the Freedom of Information Act. This subsection thus constitutes a statutory exemption of the kind referred to in paragraph (3) of section 552(b) of title 5, United States Code. Affected employees, however, would have such access to records concerning them as is authorized under the Privacy Act (5 U.S.C. 552a) and, upon completion of a Board's work, only those Freedom of Information Act exemptions applicable to Department records generally would be available. Subsection (d) exempts Accountability Review Boards, from the Government in the Sunshine Act and Federal Advisory Act.

#### Section 204 - Findings

Section 204 requires the Board inquiring into an incident to make written findings of two kinds. First, the Board must determine whether there are reasonable grounds to believe that the injury, loss of life or destruction of property with

- 1 -

respect to which the Board was convened was security-related. Second, the Board must determine whether there is probable cause (as that term is understood by United States courts) to believe that a breach of duty by an individual employee of the United States Government contributed to such injury, loss of life or destruction of property. The section specifies that in making its findings the Board is to consult and take into account all sources (such as statutes, regulations and instructions) relevant to the issue of work performance and official duty.

It should be noted that not all inquiries would present a Board with complicated factual circumstances or difficult judgments to make. In a case involving relatively few or relatively easy issues, the Board can -- and it is fully expected that it would -- move with correspondingly greater speed to complete the inquiry called for by this title.

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#### Section 205 - Program Recommendations

When an Accountability Review Board is convened to investigate an incident involving injury, loss of life or destruction of property at a United States Government mission overseas, a principal purpose of its inquiry must be to enable the Department of State to take corrective action to avoid any such incident in the future. Accordingly, section 205 contemplates that the Board shall draw the necessary conclusions from its investigation and make appropriate recommendations to improve security and promote security awareness.

#### Section 206 - Disciplinary Proceedings

There may be many cases in which a Board finds no probable cause to believe that any breach of duty by an employee contributed to the injury, loss of life or destruction of property involved in an incident. In such cases, the Board's inquiry ends with its written findings and program recommendations under the preceding two sections. However, in any case in which the Board makes an affirmative probable cause finding

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with respect to an individual employee, the Board's inquiry leads to a second phase, which is the subject of this section.

Under subsection (a) of section 206, the Board must promptly notify any employee with respect to whom it has made an affirmative probable cause finding. The Board also must notify the head of the employing agency or military service concerned with a recommendation that an appropriate investigatory or disciplinary proceeding be initiated.

Subsection (b) requires the Board to draw conclusions from its decision in the case and recommend to the Secretary of State or other agency head concerned disciplinary action as appropriate. In connection with its recommendation, the Board must also transmit a certified copy of the record of the proceeding. That record becomes part of the official record for purposes of any subsequent disciplinary action.

#### Section 207 - Certain Agency Actions

Under subsection (a) of section 207, an employee who receives notification of an affirmative probable cause finding may be placed on administrative leave for such period or periods as is determined by the head of employing agency or

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head of military service concerned to be consistent with the national interest. Such leave could be granted, for example, in a case in which the employee's continuing presence on the job was considered to constitute a risk to security. Subsection (b) provides that within thirty days after a disciplinary recommendation is made by the Board, the Secretary or agency head must initiate or take action as deemed appropriate and inform the Board of such action. It should be noted that nothing in this title would preclude an agency from taking action with respect to an employee (e.g., a reassignment) under authorities other than this Act.

#### Section 208 - Transmission of Reports

Section 208 requires the Board to transmit promptly to the Secretary of State all of its findings, decisions and recommendations. The section also requires the Secretary to report promptly to the Congress on all recommendations of the Board and on any action taken with respect to those recommendations, including reports received under Section 207(b).

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Section 209 - Relation to Other Proceedings

Section 209 makes clear that a member of the Foreign Service with respect to whom action is taken in accordance with this title may not utilize Foreign Service grievance procedures, to challenge such action.

TITLE III - AUTHORIZATION OF APPROPRIATIONS

Section 301 - Authorization

Security Enhancement

The additional amounts authorized to be appropriated by section 301(a) will be used by the Department of State to carry out the purposes of this Act. In particular, the amounts of \$520,828,000 and \$420,625,000 for Fiscal Years 1986 and 1987, respectively, are for Salaries and Expenses. The amount of \$3,177,441,000 without fiscal year limitation is for the multi-year foreign buildings program recommended by the Advisory Panel on Overseas Security. The Department is

required to assure that, within amounts actually made available, equitable funding levels are provided and specific amounts identified for security needs of other foreign affairs agencies.

Antiterrorism Research and Development

Subsection (b) authorizes appropriation of \$ \_\_\_\_\_ in Fiscal Year 1986 and \$ \_\_\_\_\_ without fiscal year limitation for antiterrorism research and development. If necessary to continue this program beyond the five years reflected in the amount sought without fiscal year limitation, additional authorization would be requested.

Section 302 - Foreign Buildings Program

Section 302 requires the Foreign Buildings Office of the Department of State, in its implementation of the Act, to make maximum possible use of American contractors from the private sector to carry out the multi-year foreign buildings program to be funded from amounts authorized by section 301. The services to be provided by such contractors could include, for example, project management and control to ensure that individual projects are completed on schedule and within budget, as well as construction management inspection, testing and review.

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**TITLE I--DIPLOMATIC SECURITY****SEC. 101. RESPONSIBILITY OF THE SECRETARY OF STATE.**

(a) SECURITY FUNCTIONS.--The Secretary of State shall develop and implement in consultation with other agencies having diplomatic personnel or missions abroad, within the scope of the resources made available, policies and programs to provide for the security of United States Government operations of a diplomatic nature and foreign government operations of a diplomatic nature in the United States, to include--

(1) protection of all United States Government employees engaged in official duties of a diplomatic nature abroad (but not including those personnel under the command of a United States area military commander) and the accompanying dependents of such employees;

(2) through (4) No Changes.

(b) ASSISTANCE.--Other Federal agencies shall, consistent with applicable law, cooperate to the maximum extent possible with the Department of State and, upon request and with or without reimbursement, may provide assistance to the Department of State, including performance of such overseas security functions as may be authorized by the Secretary of State, to facilitate fulfillment of the responsibilities

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described herein. Upon request and with or without reimbursement, the Department of State may provide training assistance and related equipment to host government personnel assigned to protect United States Government employees and missions abroad.

(c) No Changes.

(d) OTHER AGENCIES. ~~Nothing~~ contained herein shall be construed to limit impair, or otherwise effect the authority or responsibility of any other Federal, State or local agency with respect to law enforcement or domestic security operations, or with respect to intelligence activities as defined in Executive Order 12333, or successor orders, and intelligence personnel and information associated therewith. OK

(e) No Changes.

SEC. 102. BUREAU OF DIPLOMATIC SECURITY.

(a) through (c) No Changes.

SEC. 103. DIPLOMATIC SECURITY SERVICE.

(a) through (c) No Changes.

TITLE II--PERFORMANCE AND ACCOUNTABILITY

SEC. 201. ACCOUNTABILITY REVIEW.

In any case of serious injury, loss of life or significant destruction of property at a United States Government mission abroad, or involving United States Government employees engaged



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in official duties of a diplomatic nature abroad, other than at a facility or installation subject to the control of a United States area military commander, the Secretary of State shall convene an Accountability Review Board (hereinafter in this title referred to as the "Board"); provided, however, that no such Board shall be convened where the Secretary of State determines, in his sole and unreviewable discretion, after consultation with all agencies concerned, that a case clearly involves only causes unrelated to security, or that a case clearly involves no breach of duty by a United States Government employee.

SEC. 202. ACCOUNTABILITY REVIEW BOARD.

(a) MEMBERSHIP.--

(1) A Board shall consist of not less than three nor more than five members, including a Chairperson, designated by the Secretary of State. In any case in which an employee of an agency other than the Department of State receives a notification under section 206(a), the Board shall be expanded to include one member designated by the head of such agency.

(2) Notwithstanding subsection (1), in any case in which it would be necessary to convene a Board to review a matter concerning intelligence information or personnel, the Secretary of State shall designate the Director of Central Intelligence to act as his executive agent to convene such a Board and to appoint the members, including a Chairperson, to serve thereon.

**(b) FACILITIES, SERVICES, SUPPLIES AND STAFF.--**

**(1) SUPPLIED BY DEPARTMENT OF STATE.--**The Board shall obtain facilities, services and supplies through the Department of State. All expenses of the Board, including necessary costs of travel, shall be paid by the Department of State, except that the costs of a personal appearance under section 206 shall be paid by the agency employing the individual concerned.

**(2) through (3) No Changes.**

**SEC. 203. PROCEDURES.**

**(a) FACT FINDING.--**The Board may administer oaths and affirmations and authorize depositions and interrogatories. The Board may issue or authorize the issuance of a subpoena for the attendance and testimony of witnesses who are not federal employees and the production of documentary or other materials in the possession of persons who are not federal employees in such instances where the Board or Board official presiding at a personal appearance under section 206 finds that such a subpoena is necessary in the interests of justice for the development of relevant information. In the case of contumacy or refusal to obey, such subpoena shall be enforceable on application of the Board by order of any appropriate United States district court. Subpoenaed witnesses shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

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(b) **CONFIDENTIALITY.**--The Board shall adopt for proceedings under this title such procedures with respect to confidentiality as may be deemed necessary, including procedures relating to the conduct of closed proceedings or the submission and use of information and materials in camera, to ensure the protection of classified information relating to national defense, foreign policy or intelligence matters. The Director of Central Intelligence shall establish the level of protection required for intelligence information and for information related to intelligence personnel.

(c) **RECORDS.**--Records pertaining to proceedings under this title shall be separated from all other records of the Department of State, and shall be maintained under appropriate safeguards to preserve confidentiality and classification of information. Records containing intelligence information or information related to intelligence personnel shall be maintained in such secure storage as may be required by the Director of Central Intelligence. All records referred to in this paragraph, and any information derived therefrom, shall be exempt from disclosure to the public under section 552(b) of title 5, United States Code.

**SEC. 204. FINDINGS.**

The Board convened in any case shall make written findings determining--

(1) No Changes.

*reasonable*  
 (2) whether ~~there is probable cause to believe~~ } *PC*

~~that~~ a breach of duty by a United States Government employee contributed to such injury, loss of life or destruction of property.

In making its findings, the Board shall take into account such standards of conduct, statutes, rules, regulations, instructions and other sources as may have been pertinent to the performance of work and official duties.

*Std. for ind. acc.*  
 SEC. 205. PROGRAM RECOMMENDATIONS.

The Board shall make recommendations as appropriate to improve the efficiency, economy, or security of any diplomatic program or operation which the Board has reviewed. In particular, the Board shall make recommendations as appropriate to promote security awareness and individual accountability for security programs. *miss*  
*covered by this Act.*

SEC. 206. PERSONAL APPEARANCE. *cut*

(a) NOTICE.--In any case in which the Board makes an affirmative finding under section 204(2), it shall promptly notify the employee concerned. In the event that the employee is under the command of a United States area military commander, however, the Board shall notify the head of the military service involved and recommend that an appropriate investigatory or disciplinary proceeding be initiated, which proceeding shall be in lieu of the proceeding provided for in this section.

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(d) WAIVER OF PERSONAL APPEARANCE.--In any case in which an employee fails to file a timely request for a personal appearance under subsection (b), the Board may proceed to recommend disciplinary action as appropriate, and such action may be taken by the Secretary of State or the head of the employing agency if other than the Department of State without a personal appearance.

SEC. 207. CERTAIN AGENCY ACTIONS.

(a) ADMINISTRATIVE LEAVE.--Following notification to an employee of an affirmative finding under section 204(2) that employee shall be placed on administrative leave for such period or periods as the Secretary of State, or the head of the employing agency if other than the Department of State, determines to be consistent with the interests of the United States.

(b) DISCIPLINARY ACTION.--Not later than 30 days after a disciplinary recommendation is made by the Board pursuant to section 206, the Secretary of State, or the head of the employing agency if other than the Department of State, shall, pursuant to applicable law, take such action as is deemed appropriate and shall report to the Board on such action. Notwithstanding any other provision of law, disciplinary action taken by the Secretary of State, or the head of the employing agency if other than the Department of State, shall be final, shall not be subject to administrative review, and no court shall have jurisdiction to review such action.

**SEC. 208. TRANSMISSION OF REPORTS.**

The Board shall promptly transmit to the Secretary of State or the head of the employing agency if other than the Department of State, all findings, decisions and recommendations made pursuant to sections 204 through 206. The Secretary of State or head of such agency shall promptly report to the appropriate committees of Congress on all recommendations of the Board, as well as on any action taken with respect to such recommendations.

**SEC. 209. EXCLUSIVE PROCEDURE.**

Notwithstanding any other provision of law, no action taken with respect to an employee pursuant to this title shall be considered grounds for a civil action under chapter 7 of title 5, United States Code, or any other law, a grievance action under chapter 11 of the Foreign Service Act of 1980, as amended (22 U.S.C. 4131-4140), an appeal of an adverse action under chapters 75 and 77 of title 5, United States Code, or other similar action by or on behalf of that employee under any administrative procedure of any agency of the United States or under any written agreement entered into between such agency and a labor or employee organization.

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**SEC. 210. BAR TO LIABILITY.**

No member, employee, or consultant of the Board or person who cooperates with or assists the Board shall be found personally liable for any action which they take, or fail to take, to carry out this title.

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SEC. 211. BAR TO SUIT.

Nothing in this title shall be construed to create any right of civil action. No findings, decisions or recommendations made under this title may be used in any civil action brought by any person.

TITLE III--AUTHORIZATION OF APPROPRIATIONS

SEC. 301. AUTHORIZATION. No Changes.

SEC. 302. FOREIGN BUILDINGS PROGRAM. No Changes.

## Section-By-Section Analysis

### AN ACT TO PROVIDE FOR THE SECURITY OF UNITED STATES DIPLOMATIC PERSONNEL, FACILITIES AND OPERATIONS, AND FOR OTHER PURPOSES

#### Section 1 - Short Title

No Change.

#### Section 2 - Findings and Purpose

1st paragraph - No Change.

The Act creates a comprehensive new framework for the enhanced security of diplomatic personnel and facilities. The framework consists of three complementary facets. The Act sets forth the responsibility of the Secretary of State with respect to the security of diplomatic operations at home and abroad, and additionally sets forth certain provisions relating to the Bureau of Diplomatic Security and the Diplomatic Security Service of the Department of State; it provides for the convening of boards of inquiry to examine issues of accountability in cases involving terrorist or security-related attacks against United States Government officials or facilities abroad; and it provides authorization of appropriations necessary for the Department of State to carry out its responsibilities in the area of security and counterterrorism, and in particular to finance the acquisition of new missions overseas as recommended by the Advisory Panel on Overseas Security.

## TITLE I - DIPLOMATIC SECURITY

#### Section 101 - Responsibility of the Secretary of State

1st paragraph - No Change.

With respect to overseas security, under paragraph (1) of this subsection the responsibility of the Secretary of State extends to the protection of all United States Government

employees engaged in official duties of a diplomatic nature who are overseas (and their accompanying dependents), other than those under the command of a United States area military commander. The formulation used to describe the persons covered derives generally from section 207 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3927), which specifies the persons who are under the direction and supervision of a United States chief of mission. Similarly, under paragraph (2) the Secretary's responsibility extends to the establishment and operation of security functions at all United States Government missions abroad, other than facilities of installations subject to the control of a United States area military commander.

3rd paragraph - No Change.

Section 101 also contains certain other provisions which are closely related to the matters described in subsection (a). Subsection (b) imposes an obligation on other Federal agencies to, consistent with applicable law, cooperate to the maximum extent possible with the Department of State to facilitate fulfillment of its security responsibilities. It also provides that for these purposes such agencies may render assistance, upon request and with or without reimbursement (as the agencies may agree), to the Department of State. It is expressly provided that such assistance may include the performance of overseas security functions by other agencies to the extent authorized by the Secretary of State. Assistance of this kind could be appropriate in circumstances, for example, involving the facilities of other agencies abroad. Subsection (b) also provides that the Department of State may furnish training assistance and related equipment, upon request and with or without reimbursement to host government personnel assigned to provide security for United States Government employees and missions abroad. Such assistance would be independent of existing programs for antiterrorism assistance under chapter 8 of Part II of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2349aa et seq.).

Subsection (c) makes clear that this Act does not limit the authority or responsibility of a chief of mission as set forth in section 207 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3927). Similarly, subsection (d) makes clear that this Act does not limit, impair, or otherwise effect the authority or responsibility of any other Federal, State or local agency with respect to law enforcement or domestic security operations, or with respect to intelligence activities as defined in Executive Order 12333, or successor orders, and intelligence personnel and information associated therewith.

6th paragraph - No Change.

Section 102 - Bureau of Diplomatic Security - No Change.

Section 103 - Diplomatic Security Service - No Change.

## TITLE II -- PERFORMANCE AND ACCOUNTABILITY

### Section 201 - Accountability Review

Section 201 instructs the Secretary of State to convene a board of inquiry, referred to as an Accountability Review Board (the "Board"), in any case involving serious injury, loss of life or significant destruction of property at a United States Government mission abroad or involving United States Government employees engaged in official duties of a diplomatic nature abroad, other than at a facility or installation subject to the control of a United States area military commander. The requirement does not, however, pertain to cases clearly involving only natural or other causes not related to security. It also does not pertain to cases in which there was clearly no breach of duty by a United States Government employee that contributed to such injury, loss of life or destruction of property.

### Section 202 - Accountability Review Board

Under subsection (a) of section 202, a Board shall consist of three to five members designated by the Secretary of State, who also chooses the Chairperson of the Board. In addition, this subsection provides for an expansion of the Board in certain cases in which employees of agencies other than the Department of State are found to have been involved in the incident under review. Finally, this subsection provides that in any case in which it would be necessary to convene a Board to review a matter concerning intelligence information or personnel, the Secretary of State shall designate the Director of Central Intelligence to act as his executive agent to convene such a Board and to appoint the members, including the Chairperson, to serve on the Board.

Subsection (b) deals with the issue of support services for the Board. The Board is to obtain all necessary facilities, services and supplies through the Department of State. The Board's expenses are also to be paid by the Department (except for the costs of a personal appearance under Section 206, which are to be borne by the agency employing the individual who has requested the personal appearance). In addition, the Board may retain the services of employees, experts and consultants who shall be responsible to the Board, may request that employees of other agencies be detailed to the Board, and may request assistance from an inspector general of the Department of State.

### Section 203 - Procedures

Section 203 empowers the Board to make use of certain authorities of a procedural nature. In particular, under subsection (a) of this section, the Board may issue or

authorize the issuance of a subpoena to obtain the testimony of witnesses who are not Federal employees and the production of documentary or other materials in the possession of persons who are not Federal employees. In the event of refusal to obey such a subpoena, the Board may apply to an appropriate United States district court for enforcement.

Under subsection (b), the Board shall adopt for proceedings under this title (including any personal appearance under section 206) such procedures with respect to confidentiality as it deems necessary, to ensure the protection of classified information relating to national defense, foreign policy or intelligence matters. Those procedures may pertain to the conduct of closed proceedings, for example, or to the submission and use of information and materials in camera. Also, this subsection requires the Director of Central Intelligence to establish the level of protection required for intelligence information and for information related to intelligence personnel.

Subsection (c) provides that the records relating to proceedings under this title (including any personal appearance under section 206) must be maintained separately from all other records of the Department of State, that they must be adequately protected and that such records, and any information derived therefrom, shall be exempt from disclosure under the Freedom of Information Act. This subsection thus constitutes a statutory exemption of the kind referred to in paragraph (3) of section 552(b) of title 5, United States Code. Affected employees, however, would have such access to records concerning them to the extent authorized under the Privacy Act (5 U.S.C. 552a). Records containing intelligence information or information related to intelligence personnel are required to be maintained in accordance with such security requirements as the Director of Central Intelligence determines are appropriate.

#### Section 204 - Findings

Section 204 requires the Board inquiring into an incident to make written findings of two kinds. First, the Board must determine whether there are reasonable grounds to believe that the injury, loss of life or destruction of property with respect to which the Board was convened was security-related. Second, the Board must determine whether there is probable cause to believe that there is a breach of duty by an individual employee of the United States Government contributed to such injury, loss of life or destruction of property. The section specifies that in making its findings the Board is to consult and take into account all sources (such as statutes, regulations and instructions) relevant to the issue of work performance and official duty.

2nd paragraph - No Change.

#### Section 205 - Program Recommendations - No Change.

**Section 206 - Personal Appearance**

There may be many cases in which a Board finds no reason to believe that any breach of duty by an employee contributed to the injury, loss of life or destruction of property involved in an incident. In such cases, the Board's inquiry ends with its written findings and program recommendations under the preceding two sections. However, in any case in which the Board makes an affirmative finding with respect to an individual employee, the Board's inquiry moves into a second phase, which is the subject of this section.

Under subsection (a) of section 206, the Board must promptly notify any employee with respect to whom it has made an affirmative finding. The only exception pertains to employees under the command of a United States area military commander. In a case involving such an employee, the Board must notify the head of the military service concerned with a recommendation that an appropriate investigatory or disciplinary proceeding be initiated. Such a proceeding is to be in lieu of the proceeding provided for in the remaining provisions of this section.

Subsection (b) provides that an employee who receives the notification referred to above is entitled to a personal appearance. At the personal appearance, the employee will have an opportunity to respond to the affirmative finding under section 204 and present any additional information in his possession which the employee believes should be presented to the Board. The presiding official then makes the initial decision and the Board makes the final decision in the case, determining whether and specifically how a breach of duty by the employees contributed to the injury, loss of life or property destruction in question.

Subsection (c) requires the Board to draw conclusions from its decision in the case and recommend to the Secretary of State or other agency head concerned disciplinary action as appropriate. In connection with its recommendation, the Board must also transmit a certified copy of the record of the proceeding. ~~THAT/REPORT/PROCEEDS/WHICH/BEFORE/REPORT/OF/~~  
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Subsection (d) makes clear that if an employee fails to file a request for a personal appearance within the time frame provided in subsection (b), the Board may proceed to make appropriate disciplinary recommendations, and the Secretary of State or other agency head concerned may take disciplinary action without a personal appearance.

**Section 207 - Certain Agency Actions**

Under subsection (a) of section 207, an employee who receives notification of an affirmative finding is to be placed on administrative leave for such period or periods as is determined by the Secretary of State or other agency head concerned to be consistent with the interests of the United States. Such leave could be granted, for example, in a case in which the employee's continuing presence on the job was considered to constitute a risk to security; it might also be granted to permit the employee to make a personal appearance under section 206. Subsection (b) provides that within thirty days after a disciplinary recommendation is made by the Board, the Secretary or agency head must, pursuant to applicable law, take action as deemed appropriate and inform the Board of such action. It should be noted that notwithstanding any other provision of law, disciplinary action taken by the Secretary of State, or the head of the employing agency, is final and is not subject to any administrative or judicial review.

**Section 208 - Transmission of Reports**

Section 208 requires the Board to transmit promptly to the Secretary of State or other agency head concerned all of its findings, decisions and recommendations. The section also requires the Secretary or agency head to report promptly to the appropriate committees of Congress on all recommendations of the Board and on any action taken with respect to those recommendations.

**Section 209 - Exclusive Procedure**

Section 209 makes clear that the procedure set forth in this title constitutes the only procedure to be utilized in connection with an inquiry by an Accountability Review Board. In particular, an employee with respect to whom action is taken pursuant to this title may not utilize the Administrative Procedure Act or any other provision of law, Foreign Service grievance procedures, Civil Service adverse action appeal procedures or any other similar procedures to challenge such action.

**Section 210 - Bar to Liability**

This subsection provides that members, employees, and consultants of the Board, and persons who cooperate with the Board, shall not be subject to personal liability for acting or failing to act under this title.

**Section 211 - Bar to Suit**

This subsection provides that no rights to bring a civil action are created and that findings, decisions and recommendations made under this title may not be used in any civil action whatsoever.

**TITLE III - AUTHORIZATION OF APPROPRIATIONS**

**Section 301 - Authorization - No Change.**

**Section 302 - Foreign Buildings Program - No Change.**